



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
P.O. Box 11729  
Albany, NY 12211

## Notice of Decision

Decision Date: October 20, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000008762

[REDACTED]

Dear [REDACTED]

On September 13, 2016, you and your girlfriend appeared by telephone at a hearing on your appeal of NY State of Health's March 31, 2016 disenrollment notice, and April 9, 2016, notice of appeal.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the Account ID at the top of this notice.

### Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

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## Decision

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NY State of Health Account ID: [REDACTED]  
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## Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did NY State of Health (NYSOH) properly disenroll you from your qualified health plan for non-payment of premium effective January 31, 2016?

Did NYSOH properly determine that you did not qualify to select a different health plan outside of the open enrollment period for 2016?

## Procedural History

On November 15, 2015, NYSOH received your application for health insurance.

On November 22, 2015, NYSOH issued a notice of eligibility determination that stated that you were eligible to purchase a qualified health plan at full cost effective January 1, 2016.

On December 6, 2015, an enrollment confirmation notice was issued confirming your enrollment on December 2, 2015, in a Platinum level qualified health plan effective January 1, 2016.

On March 31, 2016, NYSOH issued a disenrollment notice stating your coverage with your Platinum level qualified health plan was terminated effective January 31, 2016. This was because a premium payment was not received by your health plan.

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On April 8, 2016, you spoke to NYSOH's Account Review Unit and appealed to have your coverage reinstated with your health plan.

On October 14, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeals Unit. The record was developed during the hearing and closed at the end of the proceeding.

## Findings of Fact

A review of the record support the following findings of fact:

- 1) The record indicates that you submitted your initial application for 2016 health insurance coverage on November 15, 2015.
- 2) You testified that you did not realize you had been disenrolled from your Platinum level qualified health plan until you had tried to have your prescriptions filled at your local pharmacy.
- 3) You testified that you paid your premium payments for January, February, and March, 2016.
- 4) Incident # [REDACTED] in NYSOH records shows a NYSOH representative on April 8, 2016 reached out to your health plan. The incident stated that despite you being signed up for electronic notification, your health plan was sending notification to you via regular U.S. mail.
- 5) Your NYSOH indicates you were receiving communication to a P.O. Box. You testified that the additional address line of [REDACTED] is in the post office address where your P.O. Box is located.
- 6) You testified and the record reflects you also have a physical address on file with NYSOH.
- 7) The Incident # [REDACTED] indicates that your health plan denied reinstatement of coverage as they stated they sent notification to both your physical address and P.O. Box.
- 8) You testified that the addition of the physical address of your P.O. Box would not preclude mail being delivered to your P.O.Box.
- 9) You testified that you have not moved since initially applying for health insurance.
- 10) You testified that your income has not changed significantly since initially applying for health insurance for 2016.

11) You testified that your household size has not changed since initially applying for health insurance.

12) You reside in Suffolk County, N.Y.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

## **Applicable Law and Regulations**

### Appealable Issues

An applicant has the right to appeal to NYSOH's Appeals Unit: (1) an eligibility determination, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (2) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions; (3) an eligibility determination for an exemption; (4) a failure by the Exchange to provide timely notice of an eligibility determination 45 CFR § 155.505; and (5) a denial of a request for a special enrollment period (45 CFR § 155.505(b)(1)(iii), 45 CFR § 155.305(b), and 45 CFR § 155.420(d)).

### De Novo Review

The NYSOH Appeals Unit must review each appeal de novo and "consider all relevant facts and evidence adduced during the appeals process" (45 CFR § 155.535(f)). "De novo review means a review of an appeal without deference to prior decisions in the case" (45 CFR § 155.500).

### Enrollment in a Qualified Health Plan

NY State of Health (NYSOH) must provide annual open enrollment periods during which time qualified individuals may enroll in a qualified health plan (QHP) and enrollees may change QHPs (45 CFR § 155.410(a)(1)).

For the benefit year beginning on January 1, 2016, the annual open enrollment period began on November 1, 2015, and extended through January 31, 2016 (45 CFR § 155.410(e)(2)).

### Special Enrollment Periods

After each open enrollment period ends, NYSOH provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a QHP, and an enrollee may change their enrollment to

another plan. This is generally permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent involuntarily loses certain health insurance coverage:
  - (a) Health insurance considered to be minimum essential coverage;
  - (b) Enrolled in any non-calendar year health insurance policy, even if they have the option to renew the expiring non-calendar year individual health insurance policy; or
  - (c) Pregnancy-related coverage; or
  - (d) Medically needy coverage.
- (2) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care; or
- (3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status; or
- (4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange; or a non-Exchange entity providing enrollment assistance or conducting enrollment activities; or
- (5) The enrollee or dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee; or
- (6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or has a change in eligibility for cost-sharing reductions; or
- (7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move; or
- (8) The qualified individual is an Indian, as defined by section 4 of the Indian Health Care Improvement Act, and may enroll in a QHP or change from one QHP to another one time per month; or

- (9) The qualified individual or enrollee, or their dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide;

(45 CFR § 155.420(d)).

Generally, if a triggering life event occurs, the qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP (45 CFR § 155.420(c)(1)).

However, a loss of health insurance coverage such as that referenced above does not include,

“voluntary termination of coverage or other loss due to—

(1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or

(2) Situations allowing for a rescission as specified in 45 CFR [§] 147.128”

(45 CFR § 155.420(e)).

## **Legal Analysis**

The first issue is whether NYSOH properly disenrolled you from your qualified health plan for non-payment of premium effective January 31, 2016.

Your appeal was requested to dispute your disenrollment from your Platinum level qualified health plan for non-payment of premium effective January 31, 2016. NYSOH issued a disenrollment notice dated March 31, 2016, which stated your insurance with your Platinum level qualified health plan was terminated effective January 31, 2016, as a premium payment was not received by your health plan issuer. This issue relates to payment of premiums to qualified health plan issuers which is not an issue that the NYSOH Appeals Unit is authorized to address.

Therefore your appeal on this issue is **DISMISSED**.

On April 8, 2016, you spoke with NYSOH's Account Review Unit and requested a special enrollment period to select a new health plan, or a reinstatement in your old health plan. The record does not contain a notice of eligibility determination or redetermination on the issue of special enrollment period. It does contain a complaint in which you requested to be reinstated in your health plan or to

choose a new plan as you were being told you could not due to being outside of the open enrollment period.

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal a NYSOH failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination.

The text of the April 8, 2016 complaint indicates you were appealing your disenrollment from your health plan and the denial to be reinstated in a plan. Since the Appeals Unit review of NYSOH determinations is performed on a de novo basis, no deference would have been granted to the notice of eligibility determination had it been issued.

Therefore, the second issue under review is whether you were properly denied a special enrollment period.

NYSOH provided an open enrollment period from November 1, 2015 until January 31, 2016. The record indicates that you submitted a complete application on November 15, 2015, and subsequently enrolled in a Platinum level qualified health plan effective January 1, 2016. After your disenrollment effective January 31, 2016, you contacted NYSOH on April 4, 2016, to see if you could be enrolled in your same health plan.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered in NYSOH. In order to qualify for a special enrollment period, a person must experience a triggering event.

You testified that your previous insurance coverage ended on January 31, 2016, which is considered a triggering life event. However, a loss of health insurance coverage such as that referenced above does not include voluntary termination of coverage or other loss due failure to pay premiums on a timely basis.

A special enrollment period can be granted if a qualified individual's enrollment or non-enrollment into a qualified health plan is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of NYSOH or its instrumentalities as evaluated and determined by the NYSOH.

You testified that it is your belief that you did not know any premium payment was missed or that you had been disenrolled from your health plan. Incident # [REDACTED] in NYSOH records shows a NYSOH representative on April 8, 2016 reached out to your health plan. The incident stated that despite you being



signed up for electronic notification with NYSOH, your health plan was sending notification to you via regular U.S. mail.

Your NYSOH indicates you were receiving communication to a P.O. Box. You testified that the additional address line of "[REDACTED]" is in fact where the post office where your P.O. Box is located. You testified that the addition of the physical address of your P.O. Box would not preclude mail being delivered to your P.O. Box. Furthermore, it is not considered an error as NYSOH was issuing notices to your correct address on file.

Since the record does not indicate that NYSOH, by action or inaction, made an error or misrepresented information with relation to your enrollment or non-enrollment in your Platinum level qualified health plan, a special enrollment period cannot be granted on this basis.

The credible evidence of record indicates that, since the open enrollment period closed on January 31, 2016, no other triggering events have occurred that would qualify you for a special enrollment period.

Therefore, NYSOH properly denied you a special enrollment period based on the April 9, 2016, notice of appeal.

## **Decision**

Your appeal on the issue of disenrollment for non-payment of premium as described in the March 31, 2016, disenrollment notice is **DISMISSED**.

You were properly denied a special enrollment period for 2016.

**Effective Date of this Decision:** October 20, 2016

## **How this Decision Affects Your Eligibility**

You do not qualify for a special enrollment period at this time.

## **If You Disagree with this Decision (Appeal Rights)**

This Decision is final unless you submit an appeal request to U.S. Department of Health and Human Services or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This

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must be done within four months of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the U.S. Department of Health and Human Services. This must be done within 30 days of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

### **If You Have Questions about this Decision (Customer Service Resources):**

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

### **Summary**

Your appeal on the issue of disenrollment for non-payment of premium as described in the March 31, 2016, disenrollment notice is **DISMISSED**.

You were properly denied a special enrollment period for 2016.

You do not qualify for a special enrollment period at this time.

### **Legal Authority**

We are issuing this determination in accordance with 45 CFR § 155.545.

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**A Copy of this Decision Has Been Provided To:**

